

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION

CLINTON REAGOR BRANNEN,

Plaintiff,

v.

KIRK MCGLAMERY, in his  
individual capacity, and  
DUSTIN LANIER, in his  
individual capacity,

Defendants.

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CV 620-122

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Before the Court is Defendants' motion to dismiss. (Doc. 38.) For the following reasons, Defendants' motion is GRANTED.

I. BACKGROUND

Plaintiff filed this 42 U.S.C. § 1983 suit on December 28, 2020, alleging four counts against Defendants: (1) malicious arrest and prosecution under the Fourth Amendment, (2) illegal seizure under the Fourth and Fourteenth Amendments, (3) state law false imprisonment, and (4) use of force without due process under the Fourteenth Amendment. (Doc. 1, at 9-12.) The underlying facts were recited in the Court's December 23, 2021 Order granting Defendants' partial motion to dismiss, in which the Court dismissed Count One of the Complaint for lack of subject matter jurisdiction.

(Doc. 25, at 1-3, 10-11.) On August 22, 2022, pursuant to Plaintiff's expressed intentions, the Court found Count IV and his claim for malicious arrest were also to be dismissed. (Doc. 37, at 4.) Therefore, the only claims remaining before the Court are Count II, alleging an illegal seizure, and Count III, containing state allegations of false imprisonment.

Defendants now move to dismiss the remainder of Plaintiff's Complaint pursuant to Heck v. Humphrey, 512 U.S. 477 (1994) because the trial court in the underlying criminal case denied Plaintiff's motion for new trial, reinstated his sentence, revoked his bond, and sent him back to prison. (Doc. 38, at 1, 4.) Defendants argue that since "Plaintiff's conviction or sentence has not been (1) reversed on direct appeal, (2) expunged, (3) declared invalid, or (4) called into question by a federal writ of habeas corpus," his claims in this case fail. (Id. at 4.) Plaintiff did not respond to the motion to dismiss. Therefore, pursuant to Local Rule 7.5, the motion is deemed unopposed. Nevertheless, the Court will review Defendants' arguments to affirm the legal basis.

## II. DISCUSSION

The basis of Defendants' motion is that under Heck and Hester v. DeLoach, No. 3:13cv093, 2016 WL 3023315 (S.D. Ga. May 23, 2016), Plaintiff's claims for false arrest/illegal seizure and false imprisonment require him prove the existence of an unlawful arrest.

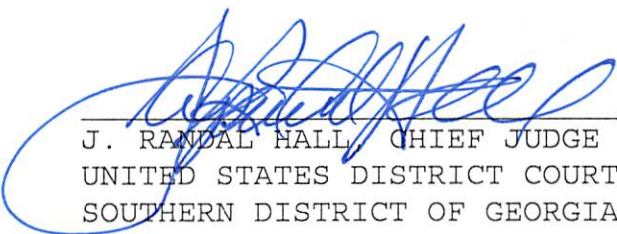
(Doc. 38, at 4-5.) However, "[f]or Plaintiff to prevail on these claims . . . he must establish that the trial court's ruling that his arrest was lawful is invalid, which would be a collateral attack on his criminal conviction." (Id. at 5.) Defendants argue that since the trial court has already affirmed the underlying criminal conviction, thereby affirming that his arrest was lawful, Plaintiff has no way to succeed on his remaining claims in this case. (Id. at 4-5.)

"One element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." Heck, 512 U.S. at 484 (citations omitted). Heck requires a plaintiff "prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Id. at 486-87. Since Plaintiff's conviction has been affirmed by the state court, it is impossible for him to meet the burden required to prove the allegations in his Complaint. Based on this fatal flaw to his claims, Plaintiff has no remaining basis for the allegations in his Complaint; thus, Defendants' motion (Doc. 38) is GRANTED and Plaintiff's Complaint shall be DISMISSED.

III. CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that Defendants' motion to dismiss (Doc. 38) is GRANTED. The Clerk is directed to TERMINATE all pending motions and deadlines and CLOSE this case.

ORDER ENTERED at Augusta, Georgia, this 25<sup>th</sup> day of April, 2023.



J. RANDAL HALL, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA